UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

DAKOTA EVANS RESTORATION, INC.

Employer

and **Case 13-RC-21753**

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL 21

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on May 19, 2008 before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[1]

I. Issues

International Union of Bricklayers and Allied Craftworkers Local 21 (the "Petitioner") seeks an election in a bargaining unit of all full-time and regular part-time tuckpointers of Dakota Evans Restoration, Inc. (the "Employer" or "Dakota Evans"). The parties stipulated at the hearing that this bargaining unit includes the following employees: Pawel Jurczyk, Pawel Kawa, Mieczyslaw Komas, Andy Kwiecien, and Marian Radecki. The parties also agreed that Sean McCrimmon should be excluded from the bargaining unit. However, the Petitioner and the Employer dispute the eligibility status of three other employees. The Petitioner contends that Krzysztof Krzymianowski is a Section 2(11) supervisor and thus is statutorily excluded from the bargaining unit. The Petitioner also contends that Ray Halberg is an employee on sick leave who should be included in the bargaining unit; the Employer contends that Halberg abandoned his job and resigned, making him ineligible. Finally, the Petitioner claims that Tyler Schroeder is ineligible because he currently is not employed by Dakota Evans; the Employer counters that Schroe-

[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

der is eligible as a seasonal employee who worked as an apprentice tuckpointer for the company last summer and will start working again in that same position on June 9, 2008 for this summer.

II. Decision

Based on the record evidence and for the reasons articulated below, I find that the Petitioner failed to carry its burden of demonstrating that Krzysztof Krzymianowski is a Section 2(11) supervisor, and thus Krzymianowski is included in the bargaining unit. I also hold that, pursuant to the Board's standard in *Red Arrow*, 278 NLRB 965 (1986), Ray Halberg is included in the bargaining unit as an employee on sick leave who has not been terminated or resigned his position. Finally, I conclude that Tyler Schroeder is a summer employee, rather than a seasonal one, who is ineligible to vote pursuant to long-standing Board precedent.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

> All full-time and regular part-time tuckpointers employed by the Employer at its facility currently located at 121 Garlish Drive, Elk Grove Village, Illinois, 60007; but excluding office clerical employees and guards, professional employees, and supervisors as defined in the National Labor Relations Act.[2]

III. The Section 2(11) Supervisory Status of Krzysztof Krzymianowski

A. Statement of Facts

The Employer is engaged in the business of masonry restoration at commercial and residential buildings, replacing mortar between bricks where it has been damaged or eroded. The replacement of exterior mortar includes tuckpointing, caulking, waterproofing, mixing mortar, loading and unloading trucks, and rigging. The Employer operates annually from about March to November, ceasing work during the winter months due to the predictably inhospitable weather in the Chicago metropolitan area.

Krzysztof Krzymianowski has worked for the Employer for approximately six years. Krzymianowski meets with Charles McCrimmon, the Employer's owner, prior to all jobs and reviews the contract proposals prepared by McCrimmon that have been accepted by a customer. Those proposals contain a description of the work to be completed on each job. The first day on all jobs involves set up to complete the work, including the erection of scaffolding, placing weights on the roof, and creating areas for material mixing and storage. For a majority of the jobs, McCrimmon is not present for the set up. Instead, Krzymianowski is responsible for ex-

[2] At the start of the hearing, counsel for the Employer stated the bargaining unit description should be "tuckpointing and related work" due to the fact that all employees perform the same job duties and their work is not limited solely to tuckpointing. In its post-hearing brief, the Employer did not make any such argument. Pursuant to the Board's delegation of authority to Regional Directors under Section 3(b) of the Act to determine, among other things, an appropriate bargaining unit, I find it preferable for the bargaining unit description to contain the occupational classification of these employees, in contrast to the work that they perform. Using the occupational classification minimizes the probability that future disputes over the inclusion or exclusion of employees will occur if and when additional job functions are performed by the Employer and its employees.

plaining to employees what has to be done based upon the information provided to him by McCrimmon. Krzymianowski is tasked with this responsibility in part because he is fluent in both the English and Polish languages, and many of the employees only speak Polish.

Testimony conflicted regarding exactly how job assignments for each employee were determined during set up. Krzymianowski testified that, if a job involves tuckpointing and cleaning, all of the employees, including him, discuss and decide the task to which each employee would be assigned. He also indicated that employees subsequently would switch off to different tasks throughout the work week. Two other employees, Ray Halberg and Andy Kwiecien, testified that Krzymianowski tells the crew how to split up the work on jobs, as well as what the work priorities are, but that employees complete the work on their own without instruction following the initial assignment.

After set up is complete and mortar replacing begins, Krzymianowski performs the same tuckpointing and caulking that other employees do, although it is not clear from the record how often these tasks occupy him. Krzymianowski retains the only key to a box used to store the tools needed for the work. However, if the box is open, employees can take tools out without consulting him. Krzymianowski and certain other employees have keys to the company truck and trailer. Occasionally, Krzymianowski will meet with engineers if problems arise on a worksite, but McCrimmon is responsible for ultimately resolving those problems.

In 2007, Krzymianowski became a salaried employee due to the length of his tenure, whereas the other tuckpointers are paid on an hourly basis. Krzymianowski still is paid for overtime hours despite being a salaried employee.

Krzymianowski's involvement in other administrative tasks is as follows. When employees need to take a day off, they notify Krzymianowski, rather than McCrimmon, because the former speaks Polish and McCrimmon does not. If an employee requests time off during a work day, Krzymianowski calls McCrimmon to get his approval. With respect to hiring, Halberg testified that McCrimmon interviewed him for a job on his own and told him where to go after he was hired, as well as that Krzymianowski would be in charge at the jobsite.

B. Legal Analysis

Section 2(11) of the Act defines the term "supervisor" as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152 (11). Thus, the statute first directs an analysis of whether an individual possesses at least one of the 12 supervisory indicia or the ability to recommend those actions. *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 2 (2006); *Avante at Wilson, Inc.*, 348

NLRB No. 71, slip op. at 2 (2006). If an individual possesses at least one type of statutory authority, the statute then dictates an evaluation of whether that authority requires the use of independent judgment or instead is merely routine or clerical in nature. *Oakwood*, supra at 2. Finally, any supervisory authority which requires the use of independent judgment also must be exercised "in the interest of the employer." *Id*. The burden of demonstrating supervisory status rests on the party seeking to establish that status, in this case the Petitioner. *NLRB. v. Kentucky River Community Care,* 532 U.S. 706, 711-12 (2001).

In this case, the evidence suggests only the possibility that Krzymianowski has the authority to assign or responsibly to direct other employees, because he may give work assignments and set job priorities for employees during project set up.[3] However, the record evidence is insufficient to establish that Krzymianowski assigned work using independent judgment or had any accountability to McCrimmon for directing employees in this fashion.

The term "assign" is defined as the act of designating an employee to a place (such as location, department, or wing), a time (such as a shift or overtime), or a task (which must involve significant overall duties, not ad hoc instructions to perform a discrete task). *Oakwood,* supra at 4-5. Based upon the employees' testimony here, Krzymianowski did assign work under this definition, because he could designate employees to perform a task on a jobsite, such as tuckpointing or cleaning, which would involve significant overall duties for the project.

Nonetheless, the Petitioner failed to establish that Krzymianowski assigned this work using independent judgment. The term "independent judgment" is defined as acting free of the control of others and forming an opinion or evaluation by discerning and comparing data, without the actions being of a routine or clerical nature. *Oakwood*, supra at 8. The term requires an analysis of the degree of discretion exercised by an individual along the spectrum between situations where there are detailed instructions for an actor to follow and where the actor is wholly free from constraints. Judgment is not independent if it is dictated or controlled by detailed written instructions contained in company policy or rules or verbal instructions of a higher authority. *Id*. In this case, the work that Krzymianowski assigned was determined by contract terms passed along to him by McCrimmon. The record does not indicate how, thereafter, Krzymianowski makes the decision of what work is assigned to each employee. No evidence establishes that Krzymianowski forms an opinion about which employee should perform each job function based on a comparison of data. In fact, all employees have the same job skills and perform all job duties, so Krzymianowski's assignment of work appears to be nothing more than random, making it routine and clerical in nature. Thus, Krzymianowski's ability to assign work is insufficient to establish Section 2(11) supervisory status because he does not use independent judgment when doing so.

Likewise, Krzymianowski does not have the authority to responsibly direct employees. The term "responsibly to direct" is defined as the act of directing what job shall be done next or who shall do it provided that the direction is "responsible" or "accountable*." Oakwood*, supra at

[3] Both McCrimmon and Krzymianowski testified that the latter had no authority to hire; transfer; suspend; lay off; recall; promote; discharge; reward employees by setting their wages, hours, or overtime; discipline other employees; adjust employees' grievances; or to recommend any of these actions. The Petitioner presented no evidence to contradict their testimony in that regard.

5-7. The term "accountable" means that the individual who is directing employees must face the prospect of adverse consequences if the work is not performed properly or no corrective action is taken. *Id*. at 7. In this case, the Petitioner presented no evidence that Krzymianowski faced adverse consequences if employees did not perform their work properly. Accordingly, Krzymianowski is not a Section 2(11) supervisor on this basis either.

The evidence in this case suggests nothing more than that Krzymianowski operated as a leadperson on these jobs, and his relationship with the other employees was more of a master/apprentice relationship than a supervisory/employee one, given his six years of experience with the Employer. *Shaw, Inc.*, 350 NLRB No. 37, slip op. at 2-3 (2007) (overturning ALJ finding that foremen were statutory supervisors by holding, among other things, that their rotation of routine duties among employees and their directing of employees based upon instructions provided by the employer did not involve the use of independent judgment); *Croft Metals, Inc.,* 348 NLRB No. 38, slip op. at 5-8 (2006) (finding leadpersons were not supervisors because they had no authority to assign significant overall duties and did not exercise independent judgment when responsibly directing employees); *Central Plumbing Specialties*, 337 NLRB 973, 975-76 (2002) (employee who told drivers which deliveries to make and instructed employees to unload trucks when deliveries were made was not statutory supervisor but rather a leadperson who, as an experienced employee, directed other employees in the performance of routine work). Although Krzymianowski gives routine assignments at the start of jobs, thereafter employees complete their work on their own without instruction, and Krzymianowski participates in the substantive work. His activities as a leadperson do not, standing alone, make him a Section 2(11) supervisor.

Based on the record evidence, Krzysztof Krzymianowski is a statutory employee who is eligible to vote in the representation election.

IV. The Voter Eligibility of Ray Halberg

A. Statement of Facts

Dakota Evans hired Ray Halberg as a tuckpointer on April 10, 2008. On that date, Halberg received and signed a one-page form entitled "Dakota Evans Restoration, Inc. Employee Policies and Manual." This form included the following language:

> Sick Days. Employee will be entitled to four (4) sick days per year after one (1) full year of employment. When employee needs to take a sick day, employer must be notified by 5:00 a.m. on the day of the illness. If unable to reach the employer directly, a voice mail message must be left with the pertinent information. Sick days are issued annually and are not accruable from year to year.

Halberg began working for the company the following Monday, April 14. Three days later on April 17, Halberg called McCrimmon and informed him that, due to a nerve issue in his

back, he would not be able to work that day.[4] Halberg had this back injury prior to working for the Employer, but apparently re-aggravated it during the initial days of his employment. Halberg indicated that he was going to get a magnetic resonance imaging (MRI) test done on his back**.** Halberg subsequently obtained a note from his doctor dated April 30, which he provided to McCrimmon. The note stated that Halberg had a spinal condition for which he was being treated and that he could only perform light duty work until further notice. On Monday, May 5, the day the petition in this case was filed, McCrimmon read the note and instructed his secretary to call the doctor's office for more information on what "light duty" meant. The secretary transcribed comments on the doctor's note, allegedly based on that conversation, which included "desk job or supervisory position only."[5] Thereafter that same day, McCrimmon called Halberg and told him that he did not have any desk jobs or supervisory positions available. Halberg asked if he could just do tuckpointing, but McCrimmon said that he had no light duty work. Halberg responded that he would try to get a different note from the doctor.

In the two weeks between the May 5th conversation and the May 19th hearing date, Halberg did not contact McCrimmon again and the Employer removed Halberg from its payroll. The only other communication between the Employer and Halberg during this time frame was a phone conversation between Halberg and Krzymianowski, in which Krzymianowski checked on Halberg's condition. During that conversation, he also asked if Halberg still possessed a harness owned by the company but, upon learning that he did, Krzymianowski did not ask for the harness back. Halberg continues to see his doctor but, as of the hearing date, had not been cleared to return to full duty.

Following Halberg's notification to the company of his inability to work due to the back injury, neither McCrimmon nor anyone else from the Employer told him he was terminated, otherwise could not come back to work, or should seek alternative employment where he could perform light duty. No one from the Employer told him to return his tools or other supplies. Likewise, Halberg never told anyone from the Employer that he was resigning his position.

B. Legal Analysis

The Board has a well-established standard of presuming that an employee on sick leave is eligible to vote in a representation election absent an affirmative showing that the employee has resigned or been discharged. See, e.g., *Home Care Network, Inc.*, 347 NLRB No. 80, slip op. (2006) (finding challenged voters who had been off of work due to medical conditions eligible and rejecting call of one Board member to overturn this standard); *Pepsi-Cola Co.*, 315 NLRB 1322, 1323-24 (1995) (overruling challenge to employee on long-term disability leave who had not been discharged or resigned); *Atlanta Dairies Cooperative,* 283 NLRB 327 (1987) (declaring employee eligible who had not worked for three years due to a disability because he intended to

[4] The dates are based on the specific testimony of McCrimmon. In his testimony, Halberg could not recall the dates or specific length of employment other than to say it was about a week and a half long before his back injury rendered him unable to work.

[5] I consider the alleged notes by McCrimmon's secretary as a basis for McCrimmon's later call to Halberg, in which he advised Halberg that the Employer did not have any supervisory or desk positions available. While the secretary's notes are hearsay and neither the secretary nor Halberg's doctor testified at the hearing, no party disputes that Halberg was injured or that he was limited to light duty work.

return to work when cleared by his doctor and had not retired or been discharged); *Red Arrow Freight Lines,* 278 NLRB 965 (1986) (employee on sick leave is eligible).

In this case, Halberg is an employee on sick leave who was not terminated by the Employer and who did not resign his position after going on leave April 17. The parties do not dispute that Halberg's absence from work is a result of a recurring back injury. Halberg's injury was confirmed to the Employer by the doctor's note dated April 30 and Halberg's conversation with McCrimmon on May 5. After receiving confirmation of the back injury, McCrimmon's response to Halberg was not to terminate him, but rather to convey that the Employer did not have any light duty positions available for him. Halberg then indicated he would attempt to secure a different doctor's note. The logical conclusion based on this conversation is that Halberg intended to return to work when his physical condition permitted him to obtain a note from his doctor indicating he was no longer restricted to light duty. Nothing in this communication between Halberg and McCrimmon remotely suggests that McCrimmon terminated him or that Halberg resigned. In fact, a short time thereafter, Krzymianowski called Halberg to check on the status of his condition and did not say anything to him about being terminated or not having a job.

The Employer argues that Halberg's failure to contact the Employer in any manner following his conversation with McCrimmon on May 5 constitutes job abandonment, and he therefore resigned his job. However, the minimal, two-week period which passed between the date of that conversation and the hearing is insufficient to support a finding of job abandonment. Moreover, Halberg testified without rebuttal he would attempt to secure a doctor's note that removed the light duty restriction, which suggests he would contact the Employer again once he obtained that note. He has continued to see his doctor and his back injury persists. Thus, no reason exists for Halberg to call the Employer since his condition has not yet improved to the point that he could return to work. For the same reasons, the Employer's suggestion that Halberg violated its written policy that employees call off by 5:00 a.m. if they are going to take a sick day also is unfounded. McCrimmon is aware that Halberg will not return to work again until his doctor permits him to do so. Requiring Halberg to call in each day would be superfluous. Moreover, the Employer's policy does not require an employee with a long-term or recurring injury whose absence obviously will be longer than one day to call in every day when the Employer already knows of the injury. In any event, this requirement does not even apply to Halberg since he is not taking paid sick days and the policy does not require employees on unpaid leave for illness to call in daily.

Finally, the Employer argues that Halberg had no reasonable expectation of returning to employment because his condition was pre-existing when he started employment and would not improve to the point that he could resume work. This argument is invalid as a matter of law. The Board's *Red Arrow* test requires only an evaluation of whether an employee on sick leave has resigned or been terminated; the reasonable expectation of returning to work analysis does not apply to situations where an employee is on sick leave. *Home Care Network*, supra at 1.

While it is true that Halberg has not used paid sick days under the Employer's policy during his absence because his tenure was not of sufficient length to earn any sick days, there is no suggestion in Board precedent that the term "sick leave" should be confined to those situations

where an employee is being compensated during an absence. The goal of the Board's *Red Arrow* approach is to ensure the maximum participation of employees in representation elections where they share a community of interest with the other members of the bargaining unit. Thus, the proper focus for determining whether an employee is on "sick leave" and eligible to vote is the reason for the employees' absence, not whether the employee is paid during that absence. While the fact that an employer is compensating an employee who is on sick or disability leave certainly supports a finding that the employee has not been terminated, it is not a necessary prerequisite to concluding that the employee actually is on sick leave. Here, no doubt exists that Halberg is absent due to a back injury and he has not returned to work because the injury persists and the Employer has no light duty work.[6]

Ray Halberg remains an employee of the Employer on sick leave who has not resigned or been terminated. As a result, he is eligible to vote in the representation election.

V. The Voter Eligibility of Tyler Schroeder

A. Statement of Facts

Tyler Schroeder was hired as a new employee by the Employer and worked during the summer of 2007. By the end of that summer, Schroeder was engaged in many of the same duties, such as tuckpointing, caulking, and grinding, that permanent employees of the Employer perform. In contrast, however, Schroeder was not certified in scaffolding, as are other employees. At the end of the summer of 2007, McCrimmon agreed to rehire Schroeder for the summer of 2008. However, Schroeder did not work for the Employer in the interim and was not working on May 5, 2008 when the Petitioner filed its petition. He is scheduled to begin working for the Employer again on June 9, 2008. The Employer expects him to obtain the scaffolding certification sometime this summer.

B. Legal Analysis

The preliminary question presented by this evidence is how to properly classify Schroeder's employment. The Employer argues that Schroeder is a seasonal employee and, based on the Board standard applicable to such workers, eligible to vote because he is engaged in the same job duties and shares a community of interest with other tuckpointers. However, the attempt to classify Schroeder as a seasonal employee is misplaced. No record evidence establishes that Schroeder was hired for either summer due to increased workload during that period. The only

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[6] Indeed, if the term "sick leave" was limited in this case to situations where an employee was being paid, the practical result would be to alter a worker's voter eligibility depending on the length of the employee's tenure and/or whether the employee already used all available sick days. An employee who worked less than a year could never be on "sick leave" because the employee would not have accrued any paid sick days under the Employer's policy. Employees who already used all of their sick days also would be ineligible because they would not be paid for any additional absences due to illness or injury, regardless of how long an employee worked for the Employer. This approach is untenable. Looking beyond this employer, employees who worked for an employer who had no formal paid sick leave policy or who were on unpaid leave under the federal Family and Medical Leave Act could never be on sick leave and eligible to vote in an election. As explained above, such an approach would contradict the Board's rationale for instituting the *Red Arrow* standard.

evidence regarding the seasonal nature of the Employer's work was that it does not operate during the winter months because the weather prohibits masonry restoration. This suggests only that the Employer's season is from March to November, not that its work increases during the summer. In fact, McCrimmon testified that Schroeder was hired and worked only for the summer in 2007, and that the same work period applied this year. In addition, although no testimony addressed this point, the Employer's counsel stated at the start of the hearing that Schroeder was a college student, suggesting he worked for the Employer during the summer when school was not in session. Thus, Tyler Schroeder is classified appropriately as a summer employee, not a seasonal one.

After being properly classified in this fashion, the eligibility of Schroeder is an issue quickly resolved. The Board has long held that summer workers whose employment will terminate at the end of the summer are temporary employees who are not included in the bargaining unit. *J.K. Pulley Co.*, 338 NLRB 1152, 1152-53 (2003) (sustaining a petitioner's challenge to the ballot of a high school student who worked during the summer for an employer where no evidence indicated that employment was to continue into school year); *Pen-Mar Packaging Corp.*, 261 NLRB 874 (1982) (sustaining challenge to ballot of college student who worked during the summer and noting that the expectation that employment would terminate at the end of the summer was sufficiently definite to dispel any reasonable expectation of continued employment); *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971) (excluding students hired for one summer without the expectancy of continued employment). See also *Marian Medical Center*, 339 NLRB 127 (2003) (summarizing Board's approach and prior cases, while noting that employees are temporary and excluded when evidence shows that their tenure of employment is finite, not uncertain).

In this case, Schroeder undeniably has a finite term of employment with the Employer. The company's owner stated only that he will be working during the summer of 2008. Because his term of employment is finite, he is excluded from the bargaining unit, irrespective of whether he is performing the same work as other employees in the unit. Moreover, the fact that Schroeder will have worked two consecutive summers for this employer does not change the result. Intermittent, sporadic employment of this kind is insufficient to establish that a worker is a regular part-time employee. *Crest Wine and Spirits, Ltd.*, 168 NLRB 754 (1967) (sustaining challenge to ballot of summer employee who also had two periods of part-time employment during the school year over the course of a three-year period).

Accordingly, Tyler Schroeder is excluded from the bargaining unit.

VI. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the elec-

tion date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Bricklayers & Allied Craftworkers Local 21.

VII. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before June 17, 2008**.** No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **June 24, 2008.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 10th day of June, 2008.

Joseph A. Barker
Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — Voter Eligibility – Statutory Exclusions

Blue Book - 177-8501-2000-0000; 177-8520-2400-0000; 460-5067-4500-0000; 460-5067-8400-0000

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